REMARKS

Applicants have carefully reviewed this Application in light of the Office Action mailed May 7, 2007. Claims 1-20 are pending in this Application. Claims 1-7, 10-14, 16, 19, and 20 stand rejected under 35 U.S.C. § 102(b), and Claims 1, 7-9, 12, 15, 17, and 18 stand rejected under 35 U.S.C. § 103(a). Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 1-7, 10-14, 16, 19 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,285,656 issued to Srinivas Chaganty et al. ("*Chaganty*").

Chaganty discloses a network flow switch system that uses an active flow switch and a passive flow switch in conjunction to achieve redundancy or failover. (Abstract). The active and passive switches are connected to each other via failover links. (Col. 2, Lines 39-42). Status signals are transmitted between the switches across the failover links. (Col. 4, Lines 1-2). When the passive switch detects a failure of the active switch, the passive switch becomes active. (Col. 3, Lines 8-11).

Claim 1 recites a system comprising "a status circuit . . . wherein the status circuit communicates link status of the switch-side port to the fail-over circuit."

Claim 7 recites an apparatus comprising "a status circuit . . . wherein the status circuit communicates link status of the switch-side port to the fail-over circuit."

Claim 12 recites a method comprising "monitoring link status of a switch-side port of a switch."

Applicants respectfully submit that the cited reference fails to disclose each and every element of the Applicants' invention. For example, *Chaganty* fails to teach, disclose, or suggest monitoring the "link status of a switch-side port."

The Examiner argues that the limitations of Applicants' invention are disclosed by *Chaganty* as follows:

> Chaganty further discloses *a status circuit in the first switch in communicating link status of the switch-side port to a fail-over circuit* (Col. 8 lines 38-39 Flow switch continues to monitor status signals and status signal requests where the status circuit and fail-over circuit are part of the switch).

(Office Action, Pages 2-3). However, the cited reference monitors status signals across a failover link connecting the active and passive switches. (Col. 3, Lines 8-11; Col. 4, Lines 1-2). Monitoring status signals on the failover link is distinct from monitoring the link-status of the switch-side port in the Applicants' invention. The cited reference does not teach any fail-over system or method in which the switch-side ports, to which Y-cables 145 and 150 are attached leading to routers 175 and 180, are monitored. (Col. 2, Lines 61-65. *See also* Fig. 1). The cited reference fails to disclose the recited limitations and, therefore, cannot anticipate Claims 1, 7, and 12.

Given that Claims 2-6 depend from Claim 1, Claims 10 and 11 depend from Claim 7, and Claims 13, 14, 16, 19, and 20 depend from Claim 12, Applicants respectfully submit that Claims 2-6, 10, 11, 13, 14, 16, 19, and 20 are allowable. As such, Applicants respectfully request that the Examiner withdraw the rejections and allow Claims 1-7, 10-14, 16, 19, and 20.

Rejections under 35 U.S.C. § 103

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chaganty* in view of U.S. Patent No. 6,381,218 issued to Michael S. McIntyre et al. ("*McIntyre*").

Claims 9, 15, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chaganty* in view of U.S. Patent No. 6,032,194 issued to Silvano Gai et al. ("*Gai*").

Claims 1, 7 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,882,653 issued to Yoshinao Kiuchi et al. ("*Kiuchi*") in view of U.S. Patent Application Publication No. 2002/0176355 by Alan Mimms ("*Mimms*").

Kiuchi discloses a gateway system for interconnecting an IP network with a telephone network and a method for controlling alternative routing due to faults in the IP network or gateway system. (Col. 1, Lines 1-7). When a fault is detected by the gateway system, the controller in the gateway system initiates an alternative routing instructing method to inform the telephone network how to proceed in connecting a call. (Col. 2, Lines 24-32. *See also* Fig. 6). The telephone network then connects to a different line in order to complete the call. (*See* Col. 2, Lines 32-35. *See also* Fig. 6).

Mimms discloses a network in which a secondary router monitors the information exchanged between a primary router and a peer router in order to maintain awareness of the current state of the network topology in anticipation of a fail-over from the primary to the secondary router. (Abstract).

Claim 1 recites a system comprising "the fail-over circuit automatically disabl[ing] the server-side port, in response to receiving a link status of down from the status circuit."

Claim 7 recites an apparatus comprising "the fail-over circuit automatically disabl[ing] the server-side port, in response to receiving a link status of down for the switch-side port."

Claim 12 recites a method comprising "in response to detecting a link status of down on the switch-side port, automatically disabling a server-side port of the switch."

Applicants respectfully submit that the cited references fail to disclose every element of the Applicants' invention. For example, each of *Kiuchi* and *Mimms* fails to teach, disclose, or suggest "disabling a server-side port of the switch."

The Examiner argues that the limitations of Claim 1 of Applicants' invention are disclosed by *Kiuchi* as follows:

> Kiuchi further discloses *the fail-over circuit automatically disabling the user-side port in response to receiving a link status of down from the status circuit* (and Col. 12 lines 37-38 The processor of the primary signal processor detects a fault and Col. 12 lines 42-46 The processor of the controller blocks the group of lines 1 contained in the primary signal processor, where blocking is disabling them).

(Office Action, Page 10). The Examiner's arguments regarding Claims 7 and 12 of the Applicants' invention are the same as the argument for Claim 1. However, this portion of *Kiuchi* teaches that under some fault cases "[t]he processor 111 and telephone network interface portion 117 of the controller 1 *exchange ISUP blocking signals BLO (S807) and BLA (S808) between the telephone network*" in order to notify the telephone network not to use specific lines due to faults in the IP network. (Col. 12, Lines 42-46. *See also* Fig. 6 ref. S606 and S611) (emphasis added). Transmitting a blocking signal from the controller to the telephone network in *Kiuchi* is distinct from disabling a server-side port in the Applicants' invention. Regardless, this blocking signal is inapposite in an obviousness analysis of the Applicants' invention, as explained below.

Kiuchi discloses six different fault cases and five different alternative routing instructing methods. Only some of these fault cases and alternative routing instructing methods are applicable to the Applicants' invention for a determination of obviousness, however. Fault case 1 is a fault between a controller and a primary signal processor. (Col. 7, Lines 5-7. *See also* Fig. 5). Fault case 2 is a fault between a primary signal processor and the management servers. (Col. 7, Lines 7-9. *See also* Fig. 5). Fault case 3 is a fault between a controller and the management servers. (Col. 7, Lines 9-11. *See also* Fig. 5). Fault case 6 is a fault in the primary signal processor. (Col. 7, Lines 15-16. *See also* Fig. 5). These fault cases do not appear on the network-side of the data path originating at the user (*see* Fig. 5) and are therefore not analogous to the Applicants' invention, which monitors the "link status of the switch-side port." Alternative routing instructing methods 1, 4, and 5 are employed only when fault cases 1, 2, 3, or 6 are detected. (Fig. 6, ref. S606 and S611). Therefore, the disclosures in *Kiuchi* under fault cases 1, 2, 3, and 6 and alternative routing instructing methods 1, 4, and 5 can not be combined with *Mimms* to render the Applicants' invention obvious, as these elements teach different inventions.

When *Kiuchi* is combined with *Mimms*, only fault cases 4 and 5 are applicable to the Applicants' invention in an obviousness determination. Fault case 4 is a fault between a controller and the ISP network. (*See* Fig. 5). Fault case 5 is a fault between a primary signal processor and the ISP network. (Col. 7, Lines 13-15. *See also* Fig. 5). Fault cases 4 and 5 are applicable because of the six fault cases, only 4 and 5 are on the network side of the data path originating at the user (*see* Fig. 5), analogous to the path in the Applicants' invention extending from the switch-side port. When fault cases 4 and 5 are detected in *Kiuchi*, alternative routing instructing method 2 or 3 is called. (Fig. 6, ref. S613). Alternative routing instructing methods 2 and 3 do not call for disabling any ports or lines, nor do they issue a blocking signal. Rather, upon finding a fault in the IP network, the channel management table in the controller's storage (fault case 4) or the primary signal processor's storage (fault case 5) is updated with a "fault" status for the destination IP address. (Col. 13, Line 63 - Col. 14, Line 3; Col. 14, Lines 59-67). When a call is placed from the telephone network to the IP network, the controller transmits messages to the telephone network indicating that an alternative route is to be taken. (Col. 14, Lines 8-15; Col. 15, Lines 14-19). Accordingly, *Kiuchi* and *Mimms* fail to disclose the recited limitations, and therefore, cannot render obvious Claims 1, 7, and 12.

In addition, in order for the cited references to even arguably be pertinent, one of ordinary still in the art would have to significantly modify *Kiuchi* so as to change the principle of operation of *Kiuchi*. For example, alternative routing instructing methods 2 and 3 would have to be changed to employ the blocking signal of alternative routing instructing methods 1, 4, and 5 (*see* Col. 14, Lines 8-18), or fault cases 4 and 5 would have to rely on alternative routing instructing methods 1, 4, or 5 instead of alternative routing instructing methods 2 and 3 (*see* Col 7, Lines 55-62). Accordingly, the modification and combination suggested by the Examiner is improper. *See* M.P.E.P. § 2143.01 ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.")

Given that Claims 8 and 9 depend from and provide further patentable limitations to allowable Claim 7, and Claims 15, 17, and 18 depend from and provide further patentable limitations to allowable Claim 12, Applicants respectfully submit that Claims 8, 9, 15, 17, and 18 are allowable. Accordingly, Applicants respectfully request that the Examiner withdraw the rejections and allow Claims 1, 7-9, 12, 15, 17, and 18.
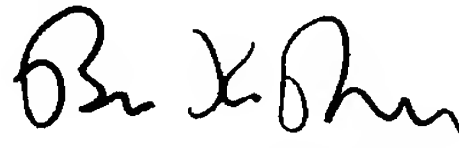
CONCLUSION

Applicants appreciate the Examiner's careful review of the application. Applicants have now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. For the foregoing reasons, Applicants respectfully request reconsideration and full allowance of Claims 1-20.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2684.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicants

Brian K. Prewitt
Reg. No. 60,135

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SEND CORRESPONDENCE TO:
BAKER BOTTS L.L.P.
CUSTOMER NO. **31625**
512.322.2684
512.322.8354 (fax)

AUS01:467217.2